IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1106 OF 1997

Shri Arun Waman Apte ...Appellant

Versus

Shri Sharad Krishnaji Modak & Anr. ...Respondents

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Mr.Tejas Deshmukh i/b Mr.A.A.Kumbhakoni for Appellant.

Mr.G.S.Godbole for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Counsel for the parties. This Appeal from Order takes exception to the judgment and order passed by the Joint Civil Judge, Senior Division, Pune dated 6th August 1997 below Exhibit 5 in Special Civil Suit No.960 of 1997. The operative order passed by the Trial Judge which is impugned in this Appeal reads thus:

"1. Application Exh.5 is rejected.

2. The defendant to deposit Rs.1,00,000/- in the Court within three days from the date of order i.e. on or before 8-8-1997. The defendants, on failure of deposit this amount in the court within three days, is hereby restrained from creating third party interest in the suit property, till the disposal of the suit.

3. Cost of this application will be in cause."

2. It is obvious that the interlocutory application came to be rejected but at the same time, the lower Court put the Appellants/Defendants to terms of depositing sum of Rs.1,00,000/- (Rupees One Lakh) within the specified time, failing which, will have to suffer order of injunction not to create third party interest in the suit property till the disposal of the Suit. This part of the order is challenged in the present Appeal from Order. No interim order has been passed in favour of the Appellants by this Court. In other words, for all this period, Appellants have suffered order of injunction.

3. At this distance of time, it will be

unnecessary to dwell upon the contentious issues raised in the Appeal. Instead, ends of justice would be met if the Trial Court were to be directed to dispose of the Suit expeditiously, preferably by end of September 2006. This direction is passed on the assumption that the Suit is still pending. In all probability, the Suit must have been finally disposed of by now, as it pertains to year 1997.

4. As mentioned earlier, even if the Suit is pending, at this distance of time, no fruitful purpose would be served in examining the rival contentions raised in the Appeal. Hence, this Appeal from Order is disposed of with direction to the Trial Court to dispose of the Suit, if pending, preferably by the end of September 2006.

5. It is made clear that if there is any other older High Court or Supreme Court expedited matter pending before the Trial Judge, the same shall be given precedence and the present Suit shall be heard immediately thereafter, keeping in mind the outer limit provided in this order being end of September 2006.

6. All questions in the said Suit are left open to be decided by the Trial Court on its own merits in accordance with law, uninfluenced by the observations made in the impugned Judgement.

A.M.KHANWILKAR, J.